IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 81 OF 2005

CAMILO GOMES AND ANR., ...Appellants

Versus

MRS.VIRGINIA FERNANDES AND ANR., ...Respondents

Shri E.P. Lobo, Advocate for the Appellants.
Mr. Mario Pinto Almeida Advocate For Respondents.

Coram:- R.M.S. KHANDEPARKAR, J.

Date:- 16th February, 2006

P.C.:

The impugned judgment passed by the lower appellate Court is sought to be challenged by contending that the appeal gives rise to the following substantial questions of law :-

(1) Whether Section 9 of CPC overrides the provisions contained in the Mundcar Act, 1975 and especially Sections 31 and 32 thereof.

(2) Whether the Civil Court had the jurisdiction to try an issue inter se betweeen two Mundcars and especially without reference to the landlord of the property.

2. Undisputedly no issue about the absence of jurisdiction was raised before the Court below and therefore the points which are sought to be framed as substantial questions of law and quoted above, do not arise for consideration in the case in hand. As a matter of record, no such plea was also raised before the lower appellate Court.

3. It was also sought to be contended that proper identity of the area

stated to have been purchased by the respondents was not established nor the respondents had got the demarcation done of the purchased area though a vague submission in that regard was sought to be made in the written statement. Admittedly, no efforts were made by the appellants either to insist for framing of an issue in that regard so as to caution the respondents about the requirement of establishing the identity of the property as well as the fact of demarcation of the area purchased by the respondents. Undisputedly, the respondents had raised a specific plea that the land purchased by them had been demarcated through the Surveyor. The lower appellate Court, in its judgment, on detail appreciation of all the materials on record, has arrived at a finding about the absence of challenge to the various facts stated in the plaint and consequently non-requirement of evidence being led by the respondents in respect of non-controverted facts.

4. In the facts and circumstances of the case, therefore, there is absolutely no case for interference in the exercise of powers under Section 100 C.P.C. as no substantial questions of law arises for consideration in the matter. Hence the appeal fails and is rejected.

R.M.S. KHANDEPARKAR, J.

sl.